

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	CG Docket No. 03-123
)	
Petition for Declaratory Ruling on)	
Video Relay Service Interoperability)	
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**REPLY COMMENTS OF CALIFORNIA COALITION OF
AGENCIES SERVING THE DEAF AND HARD OF HEARING**

The California Coalition of Agencies Serving the Deaf and Hard of Hearing (Coalition) submits these reply comments on its Petition for Interoperability. An examination of the comments filed in this matter reveals that all comments filed by organizations or business entities, save for those filed by Sorenson Media, are supportive of the Petition and of the hundreds of comments filed by individual consumers that indicated a position, the overwhelming majority were also supportive of the Coalition's Petition. Many of the comments from individual consumers illustrate the frustration, inconvenience and undue risk experienced by consumers dependent on one provider of video relay service (VRS) due to that provider's call blockage to other providers.

In this reply, the Coalition will address some of the arguments advanced by Sorenson Media in its comments. The Coalition will also briefly address the comments filed by Hamilton Relay, which, although supportive of the Petition, urge the Commission to adopt a ruling that the Coalition believes would be too narrow and otherwise deficient.

A review of Sorenson Media's comments reveals the following:

- Sorenson admits that it blocks calls made with VP-100 videophones to other VRS providers and does not suggest the existence of any legal or technical difficulty in allowing such calls.¹
- Sorenson admits that its VRS customers experience wait times and does not deny that wait times can be 20 to 30 minutes or more.²
- Sorenson does not deny that customers experiencing significant wait times are inconvenienced, frustrated and can be put at undue risk of harm.
- Sorenson admits that in order for its VP-100 customers to call other providers of VRS they must do so using other equipment such as a D-Link i2eye or a personal computer with a webcam.
- Sorenson does not deny that customers may experience difficulties in setting up and using separate video devices; that if a customer has procured a D-Link in order to call another VRS provider or receive calls on it from another VRS provider,³ any incoming calls to the D-Link will be missed while the VP 100 is online.

¹ Sorenson has addressed one of the Coalition's complaints about consumers use of the VP-100; as Sorenson notes, on or around April 15, 2005, it changed its VP-100 licensing agreement by eliminating language that would not permit its customers to receive incoming calls from other providers of VRS. This is clearly a step that is in conformity with the Communications Act and FCC policy and Sorenson has done the right thing. However, the Coalition believes that the FCC should nevertheless issue a ruling that, in no uncertain terms, prohibits restrictive provisions such as existed in the VP-100 licensing agreement so that Sorenson or another provider clearly understands that such a provision violates FCC relay rules.

² Sorenson states that wait times are due to a "systemic lack of qualified interpreters" and at least implies that allowing calls to other providers of VRS will not help solve the problem for its customers. Sorenson Comments at 16. While the Coalition appreciates Sorenson's efforts to hire more interpreters to reduce its wait times, Sorenson's customers will be better served if they can make calls through other VRS providers that may not force them to wait to make their calls.

³ Since the D-Link also has a "videophone number dialing feature," without having to pay the extra costs for a static IP address, a customer can receive point-to-point video calls on it from other D-Link users or from at least one VRS provider known to have D-Link devices. Sorenson essentially admits that other VRS providers cannot procure VP 100's when it states that as a practical matter a customer can only receive calls on a VP 100 from another VRS provider if the

- Sorenson does not deny that developing an integrated videophone number dialing system for the VP-100 and D-Link was feasible or reasonable or that their separate systems can be integrated.⁴
- Sorenson admits that in order to receive calls on the VP-100 from callers using other video equipment, a customer needs a static IP address or a domain name that resolves to the customer's dynamic IP address, and does not deny that these solutions either come at additional cost or are not easily set up.
- Sorenson neither denies that it currently has a dominant share of the VRS business nor that its purposeful refusal to make its "VRS solution" interoperable is a major reason for this dominance.
- Sorenson infers that it is making a return on its investment in developing an Internet videophone and bringing it to the deaf and hard-of-hearing communities and makes no suggestion that it is not profiting handsomely by its VRS solution.
- Significantly, Sorenson does not admit that it developed an Internet videophone solely for the purpose of its use by the deaf and hard-of-hearing communities; it is reasonable to assume that it did not.

customer obtains a static IP address or a domain name that "resolves" to the customer's dynamic IP address. Sorenson Comments at 12-13.

⁴ Sorenson states that it does not currently have the licensing rights to integrate the two systems and cites to unspecified "technical difficulties" or "concerns" to integrate them. *Id.* Significantly, Sorenson does not state that it was powerless to prevent the existence of separate systems and, since it developed the D-Link, it is reasonable to assume that it intended that the VP-100 have its own closed system. Sorenson also does not state that it cannot obtain the licensing rights to integrate the two systems. If Sorenson can make a showing that there is either a technical or legal barrier preventing integration, which it so far has not done, the FCC should at least require Sorenson to allow other VRS providers to purchase and use VP-100's to enable them to use its videophone number dialing feature to relay calls to VP-100 customers.

- Sorenson represents that if VRS interoperability were required, there would be no opportunity to receive a return on investment for any new technology, thereby eliminating much of the incentive to develop new technology.

Sorenson's Argument that it is Not in Violation of Any FCC Relay Rule is Beside the Point

The thrust of Sorenson's primary legal argument⁵ appears to be that since there is no specific provision in the Communications Act or FCC rules that expressly states that VRS equipment or services must be interoperable, Sorenson's VRS solution is not violating the law. Much of this argument gets us nowhere; Petitioner readily admits there is no such express provision in the Act or FCC rules and that the FCC's most recent ruling⁶ did not go far enough; it is for these reasons that it has petitioned the Commission for a declaratory ruling. Sorenson describes at some length that is complying with all non-waived mandatory minimum standards; this may be so but is beside the point of the Petition.

Sorenson points to the Commission's ruling on Ultratec's CapTel system⁷ as precedent to support its VRS solution because the FCC "approved that company's exclusive use of a new proprietary technology to deliver a captioned telephone service."⁸ But CapTel is far more interoperable than Sorenson's VRS solution. CapTel is designed for use by deaf or hard-of-hearing consumers who can and who prefer to speak while receiving responses in text display. A CapTel customer is not restricted to only one relay provider;⁹ he can also make voice carry-over

⁵ Sorenson Comments at 3-19.

⁶ *Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices Are Improper and Reminds That Video Relay Service (VRS) May Not Be Used As a Video Remote Interpreting Service*, Public Notice, CC Dkt. No. 98-67 and CG Dkt. No. 03-123, DA 05-141 (2005).

⁷ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling*, CC Dkt. 98-67, FCC 03-190 (2003).

⁸ Sorenson Comments at 9-10.

⁹ It is easier for a CapTel customer to use the CapTel relay provider because when doing so, all the customer need do is dial the called party's number and the call will automatically be routed through the provider's call center.

calls through any other available relay provider by dialing 711 or another provider's toll free number.¹⁰ A CapTel customer can easily call anyone anywhere and can receive any incoming calls on one piece of equipment; no calls are blocked.

In response to concerns raised in the Coalition's Petition that the Sorenson VRS solution is jeopardizing its customers' health and putting them at unnecessary risk when they are forced to wait to make emergency or urgent calls through Sorenson's VRS, Sorenson represents that it "plans to integrate software that automatically moves the caller, in an emergency situation, to the front of the queue for the next available CA."¹¹ While the Coalition appreciates that Sorenson now understands that its purposeful blocking has created a serious situation that is putting its customers at undue risk of harm, Sorenson's approach to a solution, while it may be helpful in reducing the risk to its customers in some situations, is an inadequate solution because it does not address the problem of a regional or widespread emergency situation, such as may be caused by severe weather, earthquake, wildfire or other natural disaster or a terrorist attack such as occurred on New York City's World Trade Center. In such situations, Sorenson's VRS would be expected to experience an unanticipated spike in demand with numerous calls being designated as emergency.¹² In such a high demand situation with multiple callers designating their calls as emergency, Sorenson's approach to a solution will fail because *all but one of the calls will in fact not go to the front of the queue*, thus forcing the callers to endure potentially long and harmful waiting times to make their urgent calls. The solution that will

¹⁰ As long as calls to other VRS providers were not blocked, the Coalition would not object to Sorenson maintaining its "call VRS" button that allows its VP-100 customer to hit that button and then type in the number or IP address of the party being called without having to first dial its VRS and then provide the called party's number to the interpreter. This button would make it easier for the customer to use Sorenson's VRS.

¹¹ Sorenson Comments at 18.

¹² Although Sorenson does not provide details of its software solution, it is assumed that the caller will be allowed to hit a button on the screen interface, if deaf, or push a telephone key, if hearing, to designate an emergency situation.

best protect Sorenson customers and hearing people trying to call them is to allow VP-100 customers to call other providers of VRS and to offer other VRS providers a way to call VP-100 customers using their videophone numbers.¹³

Sorenson's Argument that the Commission Should Not Interfere with Market Forces is Not in the Best Interests of VRS Consumers

Sorenson argues at some length that the Commission should allow market forces to hold sway in the provision of VRS and should avoid regulation – that the market will correct any current imbalance and forced interoperability will stifle innovation and development of new technology because no return on investment will be possible.¹⁴ It points out that AOL was able to show that its dominant market share in IM services had declined significantly two years after the FCC had imposed its condition restricting AOL's ability to offer Internet users video streaming IM-based high-speed services applications.¹⁵

While it is true that market forces and industry moves toward interoperability of IM services eventually improved the situation sufficiently to convince the FCC to remove its restrictive condition on AOL, it is pure speculation to suggest, as Sorenson does, that because of “competitive pressure from Sorenson, other competing providers will likely emerge with different innovative products, and the consumers will benefit.”¹⁶ The fact is that Sorenson has garnered a dominant share of the VRS business because it forces all VRS calls made from its freely

¹³ This can be accomplished by integrating the now separate VP-100 and D-Link systems, or better, opening up these closed systems, or, if this is not feasible, making VP-100's available to other VRS providers for purchase and use.

¹⁴ Sorenson Comments at 19-29.

¹⁵ In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc. Transferors, to AOL Time Warner Inc., Transferee, CS Dkt. No. 00-30, Petition of AOL Time Warner Inc. for Relief From the Condition Restricting Streaming Video AIHS, Memorandum Opinion and Order, FCC 03-193 (Aug. 20, 2003).

¹⁶ Sorenson Comments at 27.

distributed VP-100's to be routed to its own VRS.¹⁷ Sorenson does not deny that it has created a condition in VRS where the network effects phenomenon is allowing it to capture a dominant share of VRS business. While it may not admit that this condition is harmful to deaf and hard-of-hearing VRS consumers, the Commission should agree with the Coalition, the other organizations representing consumers and the hundreds of individual consumers who have filed comments in support of the Petition, that the current situation is harmful. Given the facts as they existed at the time the Commission took action in imposing a condition on AOL, it was fully justified in doing so and, because the network effects of Sorenson's marketing scheme has cast a dark shadow across VRS, it is duty-bound to take corrective action now. This is especially so, as the Coalition has pointed out, because VRS is a service fully subsidized by government mandated surcharge funds. VRS providers are effectively government contractors being paid on a reimbursement basis and, as such, no provider should be allowed free reign to garner profits at the expense of the deaf and hard-of-hearing beneficiaries of this government program.

The Coalition can understand a provider being allowed the opportunity to recoup its investment in research and development. While the Section 225(a)(3) of the Communications Act requires the FCC to ensure functional equivalency of VRS, and Section 225(d)(1)(D) requires that VRS consumers pay rates no greater than the rates paid for functionally equivalent voice communication services, Section 225(d)(2) requires that the FCC's regulations "encourage . . . the use of existing technology and do not discourage or impair the development of improved technology." We do not suggest that it is always easy for the Commission to ensure that these mandates and others found in Section 225 are all met simultaneously. Currently, many states

¹⁷ In one respect, Sorenson tries to distinguish its VRS solution from AOL's IM service. Sorenson argues that its VRS solution is not a closed system as was the case with AOL's IM service. Sorenson Comments at 27. The Coalition takes issue with Sorenson's conclusion; the closed nature of the VP-100's videophone number dialing system alone is a sufficient answer. Considering the further inability of Sorenson's customers to use the VP-100 to make VRS calls through other providers lays bear the inaccuracy of Sorenson's self-serving conclusion.

have equipment distribution programs whereby manufacturers are reimbursed or paid for equipment to deaf, hard-of-hearing or other telephone subscribers with disabilities, although many states do not. Sorenson may seek distribution of its VP-100 through state programs and thereby obtain direct reimbursement for these devices. Early on, the Commission disallowed use of interstate surcharge funds to subsidize specialized equipment needed to access either the telephone network directly or through relay services.¹⁸ The Coalition would be supportive of a change in this policy, particularly with respect to services that are completely funded by the interstate TRS fund, such as VRS.¹⁹ The Coalition is not opposed to proprietary technology such as Sorenson's VRS solution or Ultratec's CapTel. The Coalition does not believe that all such technology must be shared with competing providers, as Sorenson would have us believe if interoperability were imposed.²⁰ CapTel demonstrates that proprietary technology does not have to be shared to be interoperable. However, under the current circumstances and reimbursement rules, the Coalition urges the Commission to ensure functional equivalency and reduce the increased risk of harm experienced by Sorenson's customers who are relying on their VP-100's for their telecommunication needs by requiring Sorenson to cease blocking calls made using the VP-100 and to take immediate steps to open up its closed videophone number dialing system. The Coalition believes that at this point, it is very likely that Sorenson has more than recouped its investment in the VP-100. It is time for the Commission to protect the interests of deaf and hard-of-hearing consumers rather than the financial interests of the providers that provide equipment and services that are not interoperable.

¹⁸ See, e.g., *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, CC Dkt. No.90-571 (July 26, 1991).

¹⁹ The Commission could reimburse equipment and associated software manufacturers for their costs, including research and development, through various means, such as outright purchase, case-by-case reimbursement, or by reimbursing usage charges paid by other providers to the developer of the proprietary technology through licensing agreements.

²⁰ Sorenson Comments at 29.

Hamilton Relay's Proposal is Insufficient to Address the Need for Interoperability

While Hamilton Relay supports the Petition, it urges the FCC to simply prohibit the blocking of IP addresses. It cautions against the FCC adopting a “stringent interoperability requirement” fearing it “potentially could stifle the innovation of new and better VRS services.”²¹ Hamilton cites particularly to backward incompatibility. But the one example it gives involves consumer electronics, which is an entirely different situation where access to a world-wide network is not necessary. It also refers to IP telephony providers offering innovative services that are “in various ways, non-interoperable,” but then only cites to pricing plans that differentiate between calls to “member subscribers” and calls to non-members.²² Since neither of the examples are helpful, we are left to speculate. The Coalition believes that the Commission should establish a standard of interoperability. VRS callers must be able to make calls to anyone at any time and interoperability necessary to ensure this must be the rule. Issues of technical interoperability will come up and should be addressed by the FCC on a case-by-case basis. A provider which develops or wishes to incorporate technology that is not fully compatible with other VRS technology and which raise questions of interoperability, should be required to seek a determination from the Commission with respect to its compliance with the standards set forth in the Communications Act and the Commission’s implementing rules. The Coalition is not seeking a rule that would absolutely require backwards compatibility for example. However, it is seeking a rule that requires interoperability that ensures functional equivalency and full access to the telephone network.

For the above reasons and those set forth in the Coalition’s Petition, the Commission should prohibit blocking of VRS calls and set as a condition for the receipt of compensation from

²¹ Hamilton Comments at 4.

²² *Id.* at 6.

the Interstate TRS Fund a requirement that a VRS provider's equipment and services be interoperable with the equipment and services of its competitors.

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Respectfully submitted,



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